Supreme Court, U.S.
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No. 05-

IN THE

Supreme Court of the United States

CAMERINO M. LOPEZ, JR.,

Petitioner,

v.

MARY K. CARR, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

When a public school principal's termination from his employment by his superintendent was upheld on appeal by his school district based on the school board's written "Findings [of Fact], Conclusions [of Law] and Order", did he received the process due to him just because he was accorded a full school board hearing, was represented by counsel and allowed to call witnesses and cross-examine the school district's witnesses, or could a reasonable jury decide that he had been deprived of a fair school board hearing, and hence deprived of due process, where there was substantial evidence at trial that: (1) allegations of misconduct on the part of the principal *other* than those about which he received notice were determinative in the board's decision to terminate the him – thus depriving him of the opportunity to prepare a defense to those allegations; (2) the board failed to advise the principal of additional prejudicial information that they had received about the principal prior to the hearing.

LIST OF ALL PARTIES TO THE PROCEEDING BELOW

In the court of appeals the following parties appear
appellees:

Mary K. Carr

Jesus Escarcega

Bill H. Scheel

Patricia A. Williams

Kristyne Hannah [Hannah-Strike]

Debra Gomez

James Streetz

Lois Luckey

Valerie Robles

Amy Teilborg

Paula Killian

Rebekah Cooper

Marilyn Sanchez [Sanc[illegible]z-Ayala]

Jesse Armatage

Daniel Ortega

Mary Tovar

Garthanne DeOcampo

Patricia DeBermuda

Dora Mesa

Phoenix Elementary School District No. 1

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Appendix A — Memorandum Of The United States Court Of Appeals For The Ninth Circuit Filed November 9, 2005 ..... 1a

Appendix B — Order Of The United States District Court For The District Of Arizona Filed December 24, 2003 ..... 3a

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The district court's opinion (per Broomfield, D.J.), granting defendants' Rule 50 motions for judgment as a matter of law after close of evidence at the end of almost six weeks of jury trial, (Appendix ("Pet. App.") 3a-40a), is an unpublished opinion. The court of appeals' opinion (per Wallace, Trott & Rymer, JJ) affirming the district court (Pet. App. 1a-2a) is also unpublished, but is accessible at 154 Fed. Appx. 12 (2005).

STATEMENT OF JURISDICTION

The court of appeals entered its memorandum opinion and order on November 9, 2005. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Title 42 United States Code, Section 1983.

Civil action for deprivation of rights

Section § 1983 provides in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of

the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

Ariz. Rev. Stat. § 15-539.[1]

A. Upon a written statement of charges presented by the superintendent, charging that there exists cause for the suspension without pay for a period of time greater than ten school days or dismissal of a certified teacher of the district, the governing board shall, except as otherwise provided in this article, give notice to the teacher of its intention to suspend him without pay or dismiss him at the expiration of thirty days from the date of the service of the notice.

. . .

E. Any written statement of charges alleging professional conduct, conduct in violation of the rules, regulations or policies of the governing board or inadequacy of classroom performance shall specific instances of behavior and the acts or omissions constituting the charge so that the certified teacher will be able to prepare a defense.

1. The Arizona statute is cited as it was in 1994, the relevant time. The statute has since been amended.

> It shall, if applicable, state the statutes, rules or written objectives of the governing board which the certificated teacher is alleged to have violated and set forth the facts relevant to each occasion of alleged unprofessional conduct, conduct in violation of the rules, regulations or policies of the governing board or inadequacy of classroom performance.
>
> . . .
>
> G. The certificated teacher who receives notice that there exists cause for dismissal or suspension without pay shall have the right to a hearing if he files a written request with the governing board within thirty days of service of the notice . The filing of a timely request shall suspend the imposition of a suspension without pay or a dismissal pending completion of the hearing.

STATEMENT OF THE CASE

Petitioner Camerino Lopez used to be an elementary school principal in Phoenix, Arizona. And not just any elementary school principal – his school, and he, won local and national honors, including a mention in the Congressional record, for their exemplary work with at-risk inner-city children. In 1994 that all changed when Lopez, following a well orchestrated effort of some of his own staff and school district personnel, was ousted from his position and humiliatingly terminated among public accusations that would ensure he would not work again.

Lopez asserts in this case that the school district, and various individuals connected to the district, including its superintendent, its human resources director, its board members, his assistant principal and members of his staff, deprived him of his property interest in his position with the district and of his liberty interest in his reputation and good name, without due process. Lopez also raised some related state common law claims that are not at issue in this petition.

The focus of Lopez' claims is the public evidentiary school board hearing provided to him at the conclusion of which the board voted (4-0, one member having recused himself in the middle of the hearing) to uphold the superintendent's decision to fire him. The hearing took place from September to November 1994, over

After over six years of pre-trial proceedings and then almost six weeks of trial before a jury in the District of Arizona, the trial judge granted enough of the numerous Rule 50(a) defense motions so that judgment was entered against Lopez. Key to the decision was the trial judge's ruling that Lopez had received "more than the process he was due" at his board hearing in 1994. Pet. App. 38a. The trial judge failed to address Lopez arguments concerning the unfairness of his hearing because of lack of adequate notice of all the charges against him and the impact that those additional charges had on the board members that voted to uphold his termination.

On appeal to the Ninth Circuit court of appeals, the trial judge's due process ruling was summarily upheld. The court of appeals also focused on the facts of a lengthy board hearing with Lopez represented by counsel with the ability to call witnesses and to cross-examine. Lopez' arguments

concerning the evidence of unfairness were again cursorily dismissed as "allegations of bias and error in the proceedings" – the evidence of lack of fundamental fairness, including lack of adequate notice of all of the allegations against him, received no comment.

1. Camerino Lopez worked as a principal in the Phoenix Elementary School District No. 1 for 12 years – from 1982 until 1994 – with the exception of about five months when he had a temporary reassignment always as the principal at Garfield Elementary School in November 1994 he was terminated by the district. During those years Lopez consistently received excellent evaluations – until 1994. The District stipulated at trial that Lopez had faithfully performed over and above his duties to the District and that he had received local and national commendations and awards for himself, for Garfield Elementary School and for the District. Under Lopez' principalship Garfield Elementary School, situated in the Phoenix inner city in a predominately Spanish-speaking neighborhood, was selected by the United States Department of Education as one of its "Schools that Work" and its selection was recognized in the Congressional record.

But Lopez' record of professional success came to a grinding halt in 1994. On March 10, 1994, 13 of Lopez' staff of 73 published a "Public Complaint" against Lopez, openly campaigning for his ouster as principal. On March 28, 1994, five Garfield teachers (four current, all part of the "Public Complaint" group, and one a former teacher) went to the district's Human Resource department and together filed sexual harassment charges against Lopez. A sixth former staff member also complained about Lopez after the Arizona newspaper printed a story about the first five sexual harassment complaints and the newspaper reporter contacted